

MOTION PURSUANT TO SECTION 2255 OF TITLE 28
UNITED STATES CODE
IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
ATTACKING A SENTENCE IMPOSED BY THAT COURT

Name: TODD C. SMITH

Prison Number: 23632-045

Place of Confinement: UNITED STATES PENITENTIARY TUCSON

United States District Court WESTERN District of Missouri JOPLIN

Case No. 3:11-CR-05044-DGK-1 (to be supplied by Clerk of

U.S. District Court) Sentencing Judge RICHARD E. DORR

United States

v.

(full name of movant)

(If movant has a sentence to be served in the future under a federal judgment which he wishes to attack, he should file a motion in the federal court which entered the judgment).

MOTION

1. Name and location of court which entered the judgment of conviction under attack UNITED STATES DISTRICT COURT, WESTERN DISTRICT, Springfield DIV.
2. Date of judgment of conviction December 20, 2012
3. Length of sentence LIFE
4. Nature of offense involved (all counts) TITLE 18 U.S.C. 2251(a)
Sexual Exploitation of a Minor
5. What was your plea (Check one)
 - (a) Not guilty ☒
 - (b) Guilty ☐

(c) Nolo contendere []

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:

6. Kind of trial (Check one)

(a) Jury [X]

(b) Judge only []

7. Did you testify at the trial?

Yes [X] No []

8. Did you appeal from the judgment of conviction?

Yes [X] No []

9. If you did appeal, answer the following:

(a) Name of court THE UNITED STATES EIGHTH CIRCUIT COURT OF APPEALS

(b) Result Denied

(c) Date of Result December 4, 2013

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any federal court?

Yes [X] No []

11. If your answer to 10 was "YES" give the following information:

(a) (1) Name of court U.S. DISTRICT COURT WESTERN DISTRICT OF MISSOURI
SPRINGFIELD DIVISION

(2) Nature of proceeding Judicial Complaint & Request for New Trial

(3) Grounds raised Judge RICHARD E. DORR was terminally ill
from cancer at the time of SENTENCING & TRIAL. Mr. Smith

contends that the Court could have been presiding while
under medication and Chemotherapy for cancer treatment.

- (4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes [] No [X]

(5) Result Denied

(6) Date of result April 16, 2014

- (b) As to any second petition, application or motion give the same information:

(1) Name of court N/A

(2) Nature of proceeding N/A

(3) Grounds raised N/A

- (4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes [] No [] N/A

(5) Result N/A

(6) Date of result N/A

- (c) As to any third petition, application or motion, give the same information:

(1) Name of court N/A

(2) Nature of proceeding N/A

(3) Grounds raised N/A

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes [] No [] N/A

(d) Did you appeal to an appellate federal court having jurisdiction the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes [X] No []

(2) Second petition, etc. Yes [X] No []

(3) Third petition, etc. Yes [] No [] N/A

(e) If you did not appeal from the adverse action on any petition, application or motion, state briefly why you did not:

N/A

12. State **concisely** every ground on which you claim that you are being held unlawfully. Summarize **briefly** the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

CAUTION: If you fail to set forth all grounds in the motion, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Each statement preceded

by a letter constitutes a separate ground for possible relief. You may raise any grounds which you have other than those listed. However, you should raise in this motion all available grounds (relating to this conviction) on which you based your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The motion will be returned to you if you merely check (a) through (j) or any one of the grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction was obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (d) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose evidence favorable to the defense.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impanelled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground One: THE UNITED STATES LACKS SUBJECT MATTER JURISDICTION AS APPLIED TO MR. SMITH

Supporting Facts (tell your story briefly without citing cases or law): The images Mr. Smith was charged with were never moved in Interstate, Intrastate, or any type of market, shared or commercial. Without

Mr. Smith initiating some other action where the images were moved or were
available to be moved the offense is a State issue.

B. Ground Two: Mr. Smith's conviction was obtained with evidence obtained
by coercion and Miranda Violations during custodial interview.

Supporting Facts (tell your story briefly without citing cases or
law): Detectives violated Mr. Smith's Miranda Rights when he repeatedly
invoked Miranda and asked for an attorney. He was persuaded to sign a waiver
by being told he could leave if he signed.

C. Ground Three: Mr. Smith's conviction was obtained by use of evidence
gained pursuant to an unconstitutional search and seizure.

Supporting Facts (tell your story briefly without citing cases or
law): The evidence used to convict Mr. Smith was found on a seperate
storage device that was not listed on the search warrant for a cell phone.

D. Ground Four: Ineffective Assistance of Counsel for failure to request
for evidentiary hearing to Miranda and Search and Seizure.

Supporting Facts (tell your story briefly without citing cases or
law): Defense Counsel refused to request for a evidentiary hearing
that would have shown that Mr. Smith's Miranda Rights were violated and that
the search warrant did not include the storage device where the videos were
stored.

13. If any of the grounds listed in 12A, B, C, and D were not previously
presented, state briefly what grounds were not so presented, and give
your reasons for not presenting them: Grounds A-E were not presented
because Counsel refused to raise the issues during trial and on

E. Ground Five: Mr. Smith's sentence was enhanced unconstitutionally.

Supporting Facts: Mr. Smith's sentence was enhanced by using prior criminal history that does not qualify as a predicate offense for enhancement, he was also enhanced by the offense calculation when points were given for elements that were not presented to the jury for deliberation.

F. Ground Six: Ineffective Assistance of Counsel During Trial, Sentencing, and on Appeal.

Supporting Facts: Mr. Smith's counsel was ineffective for not objecting to enhancements used to sentence Mr. Smith to a life sentence. At no time were the enhancements properly addressed to show the prejudice that resulted in a Unconstitutional Sentence.

(7A)

Appeal. Ineffective Assistance and the Constitutional Violations
are best raised on 28 U.S.C. § 2255.

14. Do you have any petition or appeal now pending in any court as to the judgment under attack?

Yes ☒ No. ☐

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing Ian A. Lewis, F.P.D.O., 901 St.
Louis Street, Suite 801, Springfield, Mo. 65806

(b) At arraignment and plea Ian A. Lewis, F.P.D.O., 901 St.
Louis Street, Suite 801, Springfield, Mo. 65806

(c) At trial Erica Mynarich, 901 E. St. Louis Street,
Suite 1600, Springfield, Mo. 65806

(d) At sentencing Erica Mynarich, 901 E. St. Louis Street,
Suite 1600, Springfield, Mo. 65806

(e) On appeal Erica Mynarich, 901 E. St. Louis Street,
Suite 1600, Springfield, Mo. 65806

(f) In any post-conviction proceeding N/A

(g) On appeal from any adverse ruling in a post-conviction proceeding N/A

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?

Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes [] No [X]

- (a) If so, give name and location of court which imposed sentence to be served in the future: N/A

- (b) And give date and length of sentence to be served in the future:

N/A

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes [] No [X]

I declare under penalty of perjury that the foregoing is true and correct.

Executed (signed) this 19th ^{DP} day of November, 2014

Signature of Attorney (if any)


Signature of movant



Mail

Todd Smith 23632-045 RECEIVED
U.S. Penitentiary
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